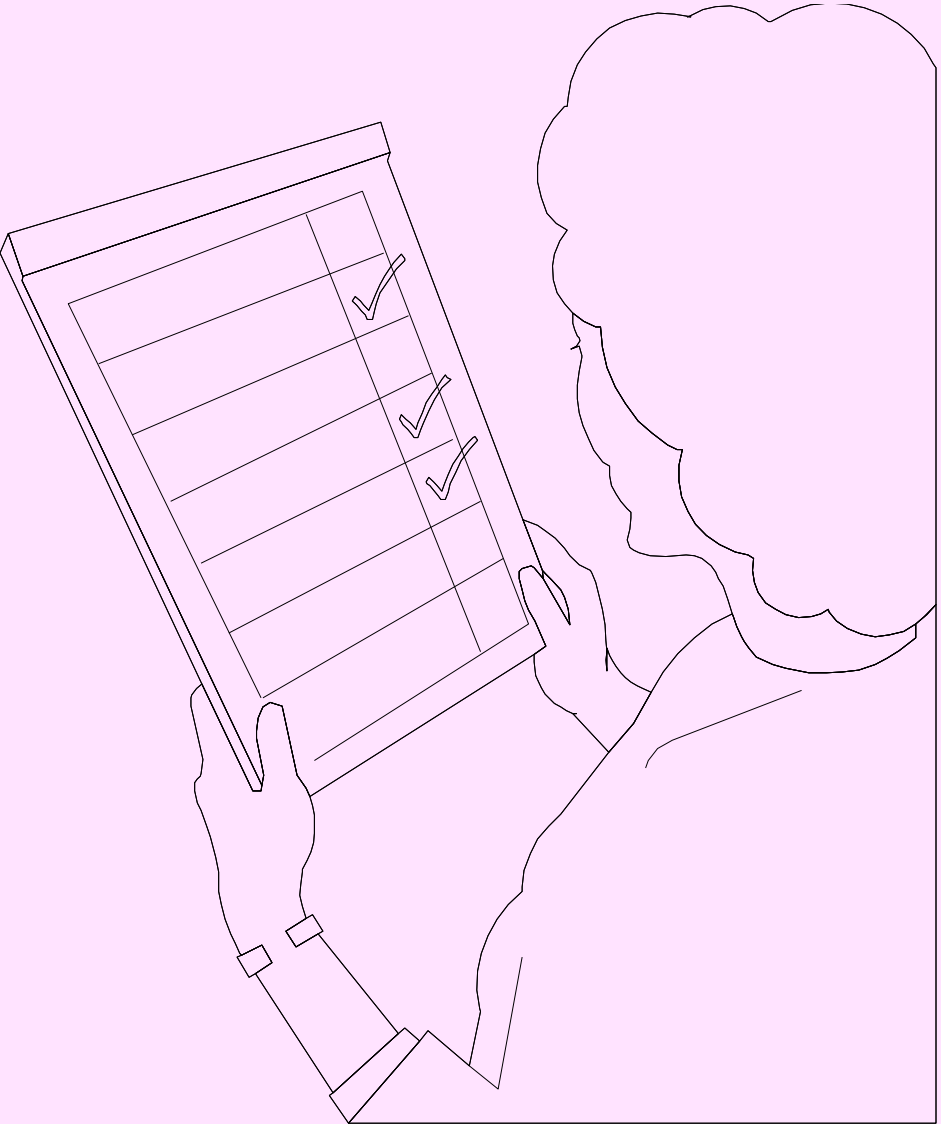
**CIVILIAN PERSONNEL ADVISORY CENTER (CPAC)**

# Management Training:

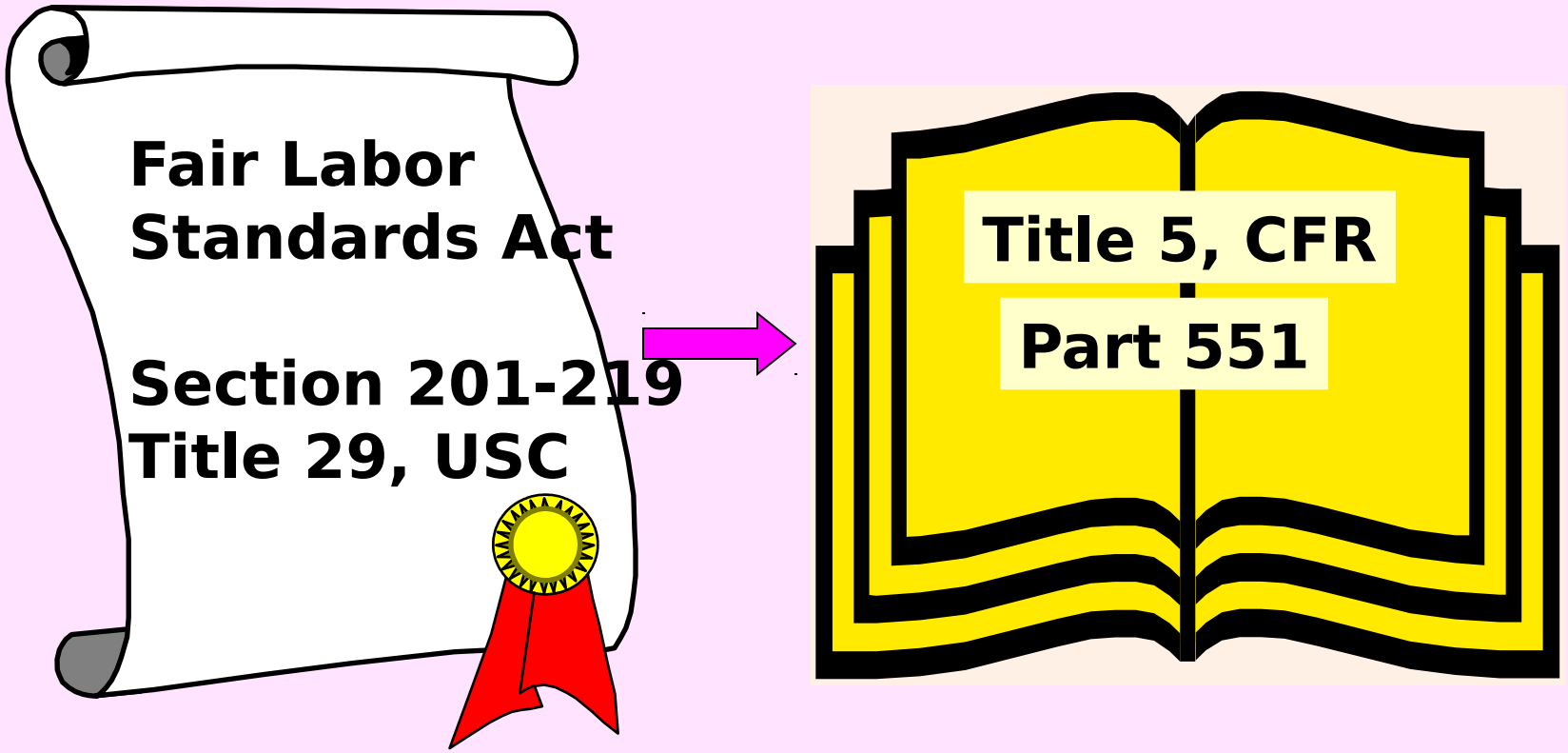
# Fair Labor Standards Act

# FLSA TRAINING AGENDA



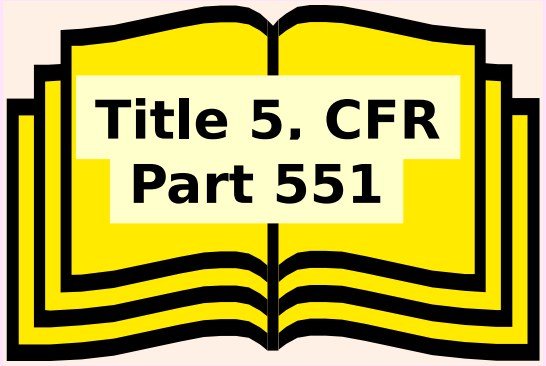
- **Overview**
- **FLSA Status - E or N**
- **Hours of Work**
- **Overtime Provisions**
- **FLSA Claims**
- **References**

# OVERVIEW


Fair Labor
Standards Act
Section 201-219
Title 29, USC
Title 5, CFR
Part 551

# OVERVIEW

- **Provides minimum standards for wages and overtime entitlements**
- **Specifies procedures for compensation for "hours of work"**




- **Nonexempt - covered by the minimum wage and overtime provisions of the Act**
- **Exempt - not covered by the minimum wage and overtime provisions of the Act**

# DETERMINING FLSA STATUS - GENERAL PRINCIPLES

**Presume nonexempt unless clearly meets exemption criteria**

**Exemption criteria should be narrowly construed**

**If reasonable doubt - designate nonexempt**

**Burden of proof for exemption rests with agency**

**E or N determined by the actual duties**

**Temporary work or duties may affect FLSA exemption status**

# DETERMINING FLSA STATUS - GENERAL PRINCIPLES

## GROUPS THAT DON'T MEET ANY EXEMPTION CRITERIA

- **Nonsupervisory GS Employees:**
  - **equipment operating and protective occupations**
  - **technicians at GS-9 or below**
  - **any grade involving highly specialized technical skills acquired through prolonged training or experience**
    - **-- Air Traffic Control**
    - **-- Aircraft Operation**
- **Most clerical occupations**

# DETERMINING FLSA STATUS - GENERAL PRINCIPLES

## ***General Schedule Employees***

**GS-4 or below - nonexempt**

**GS-5 or above - exempt only if the employee**
**is an executive, administrative, or professional employee as defined in 5 CFR 551**

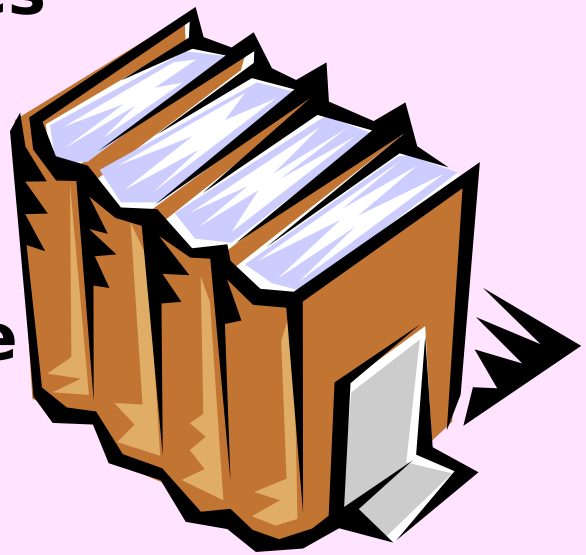
## ***Federal Wage System Employees***

**Nonsupervisory employees are nonexempt**

**Supervisory employees are exempt only if they**
**meet the executive exemption defined in**

# 5 CFR 551 - EXEMPTION CRITERIA

- **Foreign exemption - those employed in foreign countries and certain U.S. territories**



- **Executive employee**
- **Administrative employee**
- **Professional employee**

# FLSA STATUS DETERMINATION

***ROLES***

**Supervisor assigns duties & classifies position**

**CPOC reviews job and determines if "E" or "N"**

**Employee has right to challenge FLSA status or**

# 5 CFR 551 - HOURS OF WORK

## ***DEFINED AS:***

**”All time spent by an employee performing an activity for the benefit of an agency and under the control or direction of the agency"**

## ***INCLUDES:***

- **hours when required to be on duty**
- **hours suffered or permitted to work**
- **waiting time or idle time which is**

# 5 CFR 551 - HOURS OF WORK

**Under certain conditions, "hours of work" include:**

- **Preparatory or concluding activities (551.412)**
- **Time spent traveling (551.422)**
- **Time spent in training or attending conferences (551.423)**
- **Time spent adjusting grievances or performing representational functions (551.424)**
- **Time spent receiving medical attention (551.425)**

# 5 CFR 551 - HOURS OF WORK

**SUPERVISORS' RESPONSIBILITY:**

**Exercise appropriate controls such that the only work performed is that for which you <u>intend to compensate the employee</u>**

**Keep complete, accurate records of all hours worked**

# OVERTIME FOR NONEXEMPT EMPLOYEES

## ***Nonexempt Employees***

- **Entitled to overtime pay at 1.5 times their regular pay**

- **Must receive overtime pay for "hours of work" which exceed their regular tour of duty**

- **May *request* compensatory time (in**

# OVERTIME FOR EXEMPT EMPLOYEES

## ***Exempt Employees***

- **5 CFR 550.101-113 authorizes OT for GS**
- **OT pay capped at 1.5 times GS-10 step 1**
- **If basic pay is GS-10 step 10 or below,**
  **employee chooses OT vs. comp time**
- **If basic pay is above GS-10 step 10, management chooses OT vs. comp time**

- **5 CFR 532.503 authorizes OT for Wage System employees @ 1.5**

# FLSA Claims

- **Employees entitled to file a claim**
- **Claims may concern**
  - **status determination - file at any time**
  - **overtime pay - file at any time but:**
    - **2-year statute of limitations**
    - **3 years for willful violations**
    - **date claim received determines period of entitlement**

# FLSA Claims - Bargaining Unit Member

## Negotiated Grievance Procedure

- **If claimant was a bargaining unit member *at any time* during the claim period**
- **Exclusive administrative remedy**
- **No further administrative review by agency or by OPM**

# FLSA Claims - Non-Bargaining Unit Member

## Administrative Review

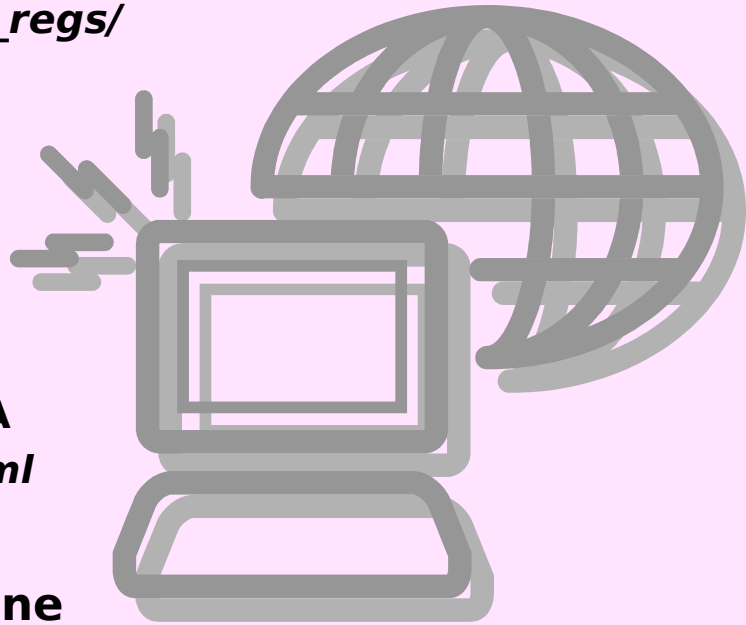
- **Employee may file with agency or with OPM (but not simultaneously) if:**
  - **not a member of a bargaining unit**
  - **bargaining unit member but not covered by a collective bargaining agreement**
  - **bargaining unit member whose agreement excluded FLSA matters**

# FLSA Claim for Non-bargaining Unit Employees

- **Must be in writing - be specific (suggested format posted on CPAC home page)**
- **Will be submitted to the employee's supervisor for review and resolution**
- **Supervisor must acknowledge receipt, in writing, and provide written decision to the claimant**
- **Claims may be submitted to OPM either:**
  - **after the local review and decision (if not satisfied) *OR***
  - **in lieu of the local review**

# References/Additional Information

- **AMCOMReg 37-34, Overtime for Civilian Employees, 13 Jul 99**
  **AMCOM Directives On-Line**
  ***https://intranet2.redstone.army.mil/amcom_regs/***



- **OPM Federal Employees and the FLSA**
  **OPM Web page**
  ***http://www.opm.gov/flsa/index.htm***

- **Code of Federal Regulations**
  **5 CFR 551 Pay Administration Under the FLSA**
  ***http://www.access.gpo.gov/nara/cfr/index.html***

- **Dept of Army Civilian Personnel On-Line**
  **PERMISS - "Fair Labor Standards Act" "FLSA and Overtime"**
  ***http://www.cpol.army.mil/* "*permiss*"**

- **AMCOM CPAC Home Page**
  ***http://www.redstone.army.mil/cpo/***